

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 741 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

R.C.PANCHAL

Versus

THE OIL AND NATURAL GAS COMMISIION, TO BE SERVED

Appearance:

MR IS SUPEHIA for Petitioner

MR AJAY R MEHTA for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/08/2000

ORAL JUDGEMENT

1. The facts of the case are not in dispute and as such I do not consider it to be necessary to digest all those in detail.

2. The petitioner remained absent from duty without

any application of leave as per the case of the respondents, whereas as per his own case, he remained absent due to illness. He produced medical certificates certifying his illness. It is not in dispute that he submitted his joining report to the Commission on 16th November, 1984 along with the medical fitness certificate of the Doctor from whom he has taken treatment of his ailment. Under the order dated 24th November, 1984, the Commission exercising its power under regulation 14(5) of the Regulations taking it to be a case of deemed resignation of the petitioner from services. That order has been challenged by the petitioner in this special civil application.

3. Shri Supehia, learned counsel for the petitioner contended that the terminology used in regulation 14 (5) of the Regulations is not conclusive but the effect thereof is the main thing and it is a case of cessation of the relationship of employer and employee in between the petitioner and the Commission and it could have been ordered only after holding a departmental inquiry i.e. to give the petitioner full opportunity to explain his case for his absence from duty to the Commission. It has next been contended that otherwise also, in the facts of this case, this deemed resignation has not been available to the respondent to dispense with the services of the petitioner in this manner and fashion. In support of his contention, learned counsel for the petitioner read out clause (5) of Regulation 14 as well as clause (2) thereof. Clause (2) amended or explained or clarified by Commission under its 107th meeting of the Standing Committee dated 6th January, 1971. Shri Supehia in support of his contentions placed reliance on the decision of this Court in the special civil application No.3400 of 1979 decided on 28th November, 1980 (Coram : N.N. Bhatt,J).

4. Shri Mehta, learned counsel for the respondent-Commission, on the other hand, contended that it is not case of termination of the services of the petitioner by way of penalty. Nor it is a case where the petitioner has been ordered to be compulsorily retired from the services by way of penalty. In fact, because of this long absence of the petitioner from duty without there being any leave application etc. this provision is attracted and it empowers the Commission to take it to be a case of deemed resignation of services of the employee concerned and it has rightly been placed in service. It has further been contended that the validity of the provision has not been challenged by the petitioner in this special civil application. It has next been

contended that the decision of the Commission taken by its Standing Committee in its 107th meeting held on 6th January, 1971 is not of any help to the petitioner. That provision applies in different contingency and not in the contingency as provided in clause (5) of Regulation 14. Lastly, it is submitted that by this deemed resignation, the petitioner will not suffer any monetary loss. He will get all the retirementary benefits on the basis of his services which he rendered with the Commission upto the date of his deemed resignation.

5. On being put by the Court, learned counsel for the petitioner is unable to tell to the Court what loss other than the salary for the period from the date of his absent from duty to his date of deemed resignation, the petitioner suffered. Another loss possibly may be that on his retirement after reaching the age of superannuation, he would have got some more amount of retirement benefit than what he would have received by this deemed resignation.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

Clause (5) of Regulation 14 reads as under:

5. Where an employee fails to resume duty on the expiry of the period of extraordinary leave if the leave granted to him is the maximum that can be granted under this regulation or where an employee who is granted a lesser amount of extraordinary leave than the maximum admissible under this regulation, remains absent from duty for any period which, together with extraordinary leave so granted exceeds the limit upto which he could have been granted leave under this regulation, he shall be deemed to have resigned his appointment and shall accordingly cease to be in the employment of the Commission, unless the Commission may determine otherwise, in view of the exceptional circumstances of the case.

7. The decision taken by the Standing Committee of the Commission in its 107th meeting held on 6th January, 1971, reads as under:

(a) the official concerned should be informed well before the expiry of the period of long absence (after the expiry of 150 days of Extra Ordinary

Leave) that he/she will be deemed to have resigned from service in the Commission, if the Extra Ordinary Leave exceeds 180 days; and

(b) the joining reports, in such cases, should not be accepted under any circumstances, without the prior approval of the headquarters.

8. Prima-facie what Shri Supehia contends that this provision of deemed resignation could have been put in service in the case of the petitioner only after he remained absent for the period beyond 180 days (after the expiry of 150 days of Extra Ordinary Leave). In the case in hand, I find that extraordinary leave has been granted to the petitioner for the period from 1st June, 1984 to 31st August, 1984 i.e. for about 90 days. AS per this decision of the Standing Committee of the Commission, it is permissible indeed to grant extraordinary leave to an employee for 180 days. Before this period of 180 days expire, there is no dispute that the petitioner submitted the joining report to the Commission along with the medical fitness certificate. So whether it can be taken to be a case of deemed resignation needs to be considered by the Commission in the light of these provisions and observations made by the Court in this judgment. As I am of the opinion that this matter has to be first considered by the Commission itself, at this stage, I do not consider it to be necessary to give any decision on points raised by the learned counsel for the parties.

9. As a result of the aforesaid discussion, this petition is disposed of in terms that the matter may be considered afresh by the Commission in the light of the provisions of clauses (2) and (5) of the Regulation 14 as well as the decision of the Standing Committee of the Commission taken in its 107th meeting held on 6th January, 1971. This decision has to be taken by the Commission within a period of one month from the date of receipt of writ of this order and a reasoned order has to be passed in both the contingencies where the claim made by the petitioner is accepted or not, and copy of the same may be sent to the petitioner by registered post A.D.. Where the claim of the petitioner is accepted then he shall be entitled for all the consequential benefits flowing therefrom. In case where the order goes adverse to the petitioner, liberty is granted to him for revival of this special civil application. The special civil application and Rule stand disposed of accordingly with no order as to costs.

zgs/-